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Illinois Commerce Commission
On Its Own Motion

Adoption of 83 Ill. Admin. Code 550,
"Non-Discrimination in Affiliate
Transactions for Gas Utilities"

CHIEF CLERK'S OFFICE

Docket No. 00-0586

ILLINOIS POWER COMPANY'S BRIEF IN REPLY TO EXCEPTIONS

Joseph L. Lakshmanan, Esq.
500 South 27th Street
Decatur, IL 62521-2200
(217) 362-7449
(217) 362-7458 (facsimile)
Joseph_Lakshmanan@illinoispower.com

Dated: May 18, 2001

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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Pursuant to § 200.830 of the Commission’s Rules of Practice and the schedule adopted in the above-referenced proceeding, Illinois Power Company (“Illinois Power” or “IPC”) hereby submits its Brief in Reply to Exceptions to the Commission’s proposed rules for non-discrimination in affiliate transactions for gas utilities (“gas affiliate rules”). Because, in general, the parties’ Exceptions raise no issues (or arguments) that have not already been disposed of by the prior submissions of the parties and the HEPO, we are responding here to only a few issues raised by certain parties and otherwise rely on our various rounds of Comments and the HEPO’s analysis. Our silence on any particular issue raised by any party should not be viewed as concurrence with that party’s position.

Initially, we reiterate our support for the HEPO’s general approach: mirror the electric affiliate rules wherever possible. HEPO at 7. Several parties would have the Commission take a different path. They want different rules to apply to gas utilities, especially with respect to joint marketing and advertising and the use of common logos and names. In making these arguments, these parties continue to rely on “evidence” (in reality, conclusions and a few stray examples)

that the Hearing Examiner found unpersuasive. The Commission should adopt the Hearing Examiner's conclusions on this point.

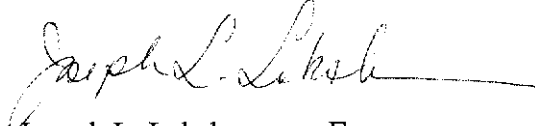
Equally importantly, these parties continue to fail to come to terms with three additional reasons for rejecting their positions. *First*, not one party makes any attempt to address the complexities their proposals would raise for combination utilities such as IPC. As we explained in our Rebuttal Comments (at 1-2), Illinois Power's combination gas and electric customers outnumber the sum of our electric-only customers and gas-only customers. This is not a trivial problem for companies such as ours: even the Staff of this Commission has recognized that attempting to put in place different rules for gas utilities as compared to electric utilities creates particularly challenging problems. *Id.* NIACCA may not be concerned about the confusion to combination customers that differing rules will cause (or the burdens placed on every combination utility), but we are. The HEPO addresses these concerns properly by having the two sets of rules mirror one another.

Second, every party espousing restrictions on joint marketing and advertising and the use of common names and logos continues to do so with a very broad brush. As we pointed out in our Rebuttal Comments (at 2), even if these parties' concerns were valid (and, if they are, one must wonder how any HVAC contractor has been able to stay in business thus far), there is still no reason to ban all joint marketing and advertising between a gas utility and all of their affiliates (even those in unrelated industries or doing business only in other geographical areas). Even with the extensive record compiled in the electric affiliate rulemaking, the Commission chose a carefully-crafted set of restrictions. Here, the burden must rest on the proponents of differing rules to provide more compelling evidence and equally carefully-crafted proposals. They have done neither.

Finally, although some parties allege that certain advertising by a few gas utilities is deceptive, none of these parties notes that there are laws designed specifically to address these types of claims. *See, e.g.*, Consumer Fraud & Deceptive Practices Act, 815 ILCS § 505/1 *et seq.*; Lanham Act, 15 U.S.C. § 1125. If these parties feel that particular companies have violated these laws, they should take appropriate actions under those laws, not attempt to punish all gas utilities for the alleged bad actions of a few.

In sum, the Hearing Examiner used the right analysis and, in general, reached the proper conclusions. The arguments of the parties seeking to impose rules that differ in significant ways from the electric affiliate rules should be rejected. Rather, the few places where the two sets of rules can be made even more harmonious (pointed out by Illinois Power in our Exceptions) should be the only substantive changes made by the Commission in adopting a final order.

Respectfully submitted,

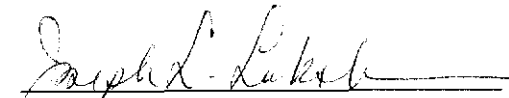


Joseph L. Lakshmanan, Esq.
500 South 27th Street
Decatur, IL 62521-2200
(217) 362-7449
(217) 362-7458 (facsimile)
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CERTIFICATE OF SERVICE

I, Joseph L. Lakshmanan, certify that on the 18th day of May, 2001, I served a copy of Illinois Power Company's Brief in Reply to Exceptions electronically and by first class mail, from Decatur, Illinois, postage prepaid to the individuals on the service list attached.



Joseph L. Lakshmanan, Esq.

Service List

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Page 1

THOMAS M BYRNE
ASSOCIATE GENERAL COUNSEL
AMEREN SERVICES
PO BOX 66149
1901 CHOUTEAU AVE.
ST. LOUIS, MO 63166-6149

LEIJUANA DOSS
ASSISTANT STATE'S ATTORNEY
ENVIRONMENT AND ENERGY DIVISION
COOK COUNTY STATE'S ATTORNEY'S OFFICE
69 W. WASHINGTON, STE. 700
CHICAGO, IL 60602

ERIKA D EDWARDS
PUBLIC UTILITIES BUREAU
1000 W. RANDOLPH ST., 11TH FL.
CHICAGO, IL 60601

DARCY A FABRIZIUS
BLACKHAWK ENERGY SERVICES
PO BOX 2226
WAUKESHA, WI 53187-2226

DAVID I. FEIN
PIPER MARBURY RUDNICK & WOLFE
203 N. LASALLE ST., STE. 1800
CHICAGO, IL 60601-1293

GERARD T FOX
ATTORNEY
PEOPLES GAS/NORTH SHORE
130 E. RANDOLPH DR., 23RD FL.
CHICAGO, IL 60601

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Page 2

ROBERT GARCIA
ILLINOIS COMMERCE COMMISSION
STE. C-800
160 NORTH LASALLE
CHICAGO, IL 60601-3104

KARA K GIBNEY
ATTY. FOR NORTHERN ILLINOIS GAS COMPANY D/B/A NICOR GAS
MAYER BROWN & PLATT
190 S. LASALLE ST.
CHICAGO, IL 60603-3441

GARRET GORNIAC
ACCOUNTING
ILLINOIS COMMERCE COMMISSION
STE. C-800
160 NORTH LASALLE
CHICAGO, IL 60601-3104

EDWARD J GRIFFIN
ATTY. FOR CENTRAL ILLINOIS LIGHT COMPANY
DEFREES & FISKE
200 S. MICHIGAN AVE., STE. 1100
CHICAGO, IL 60604

JAMES HINCHLIFF
ATTORNEY
PEOPLES GAS/NORTH SHORE
130 E. RANDOLPH DR., 23RD FL.
CHICAGO, IL 60601

CHARLES IANNELLO
ILLINOIS COMMERCE COMMISSION
527 E. CAPITOL AVE.
SPRINGFIELD, IL 62701

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Page 3

ROBERT P. JARED
REGULATORY LAW & ANALYSIS
MIDAMERICAN ENERGY COMPANY
106 E. SECOND ST.
PO BOX 4350
DAVENPORT, IA 52808

ROBERT KELTER
CITIZENS UTILITY BOARD
208 S. LASALLE ST., STE. 1760
CHICAGO, IL 60604

MARY KLYASHEFF
ATTORNEY
PEOPLES GAS/NORTH SHORE
130 E. RANDOLPH DR., 23RD FL.
CHICAGO, IL 60601

STEPHEN J MATTSON
ATTY. FOR NORTHERN ILLINOIS GAS COMPANY D/B/A NICOR GAS
MAYER BROWN & PLATT
190 S. LASALLE ST.
CHICAGO, IL 60603-3441

KATIE PAPADIMITRIU
160 N. LASALLE ST., STE. C-800
CHICAGO, IL 60601

JOHN J REICHART
OFFICE OF GENERAL COUNSEL
ILLINOIS COMMERCE COMMISSION
160 N. LASALLE ST.
CHICAGO, IL 60601

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Page 4

CHRISTOPHER J. TOWNSEND
PIPER MARBURY RUDNICK & WOLFE
203 N. LASALLE ST., STE. 1800
CHICAGO, IL 60601-1293

W MICHAEL SEIDEL
DEFREES & FISKE
200 S. MICHIGAN AVE., STE. 1100
CHICAGO, IL 60604

NICK T SHEA
DIRECTOR, RATES & REGULATORY AFFAIRS
CENTRAL ILLINOIS LIGHT COMPANY
300 LIBERTY ST.
PEORIA, IL 61602

SCOTT STRUCK
ACCOUNTING
ILLINOIS COMMERCE COMMISSION
527 E. CAPITOL AVE.
SPRINGFIELD, IL 62701

JANIS VONQUALEN
ILLINOIS COMMERCE COMMISSION
527 E. CAPITOL AVE.
SPRINGFIELD, IL 62701

BILL VOSS
ACCOUNTING
ILLINOIS COMMERCE COMMISSION
527 E. CAPITOL AVE.
SPRINGFIELD, IL 62701

TIMOTHY P WALSH
ATTORNEY
PEOPLES GAS/NORTH SHORE
130 E. RANDOLPH DR., 23RD FL.
CHICAGO, IL 60601

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DONALD L. WOODS
HEARING EXAMINER
ILLINOIS COMMERCE COMMISSION
527 E. CAPITOL AVE.
SPRINGFIELD, IL 62701